

IN THE HIGH COURT OF TANZANIA

AT SONGEA

CRIMINAL APPEAL NO. 20 OF 2006

(Originating from Songea District Court Cr.C 385/2006)

LUCY MDUDA & 4 OTHERS APPELLANTS

Versus

THE REPUBLIC RESPONDENT

Hearing Concluded: 7/2/2007

Judgment Delivered: 21/3/2007

J U D G M E N T

BEFORE: HON. L. M. K. UZIA, J

Five Appellants, to wit Lucy Mduda, Flora Mwinyi, Agnes Sanga, Victoria Sanga and Rehema Sanga were charged with the offence of theft c/s 265 of the Penal Code.

The particulars of the offence was to the effect that, the appellants jointly and together on 17th day of August, 2006 at or about 09.00 hours at Mpata Street within the Municipality of Songea in Ruvuma Region, did steal four Jora of dresses valued at Tshs. 230,000/= the properties of one Said Ally.

The appellants pleaded guilty to the charge and the trial Court Convicted them on their plea of guilty and sentenced each to five(5) years imprisonment.

Now, the appellants are challenging the conviction and sentence in this court.

I have read the appellants grounds in their joint memorandum of appeal, in substance they are challenging the trial court on convicting them on their equivocal pleas of guilty. Secondly, challenging the excessive sentence of 5 years despite of their mitigation made in court. So they prayed to this court to quash the conviction which based on the equivocal pleas of guilty, and their respective pleas in the trial Court be recorded as pleas of not guilty and the case to proceed on full trial and the sentence be reduced according to law.

This court heard this appeal on 7th/2/2007, the defence counsel, Mr. Waryuba, submitted in court to the effect that the pleas were equivocal, according to him the charge did not disclose clearly whether the appellants committed the offence, that on page two of the facts adduced, there was a word stating

"It was alleged"

In that case, the explanation of charge was based on allegations, similarly, the admissions were also based on allegations so the pleas were equivocal. The defence Counsel cited to this Court the case of Buhimila Mpemba Versus Republic (1988) TLR Page 174.

In that case, the ingredients of the offence were not explained to the appellants, therefore the plea was regarded as equivocal. The defence counsel went further to submit that in the alternative if the plea is to be found to be un-equivocal the sentence was too excessive considering that the appellants were first offenders, that they pleaded guilty, and the value of the stolen goods was little, therefore, the trial Court ought to have considered those factors, and reduce the sentence of five years.

On the other hand, the State Attorney declined to support the conviction because, the pleas were equivocal on the following reasons.

Statements of the appellants were tendered and admitted after conviction. He further informed the court that, the facts could not lead the court to enter Conviction. He also submitted to the effect that, the sentence was excessive in the circumstances of the case.

Having considered the appellants contention in their Memorandum of Appeal this court had the opportunity to hear all appellants through their advocate, I am not for the views raised by the learned State Attorney, that the Conviction would not be sustained in the case at hand.

There is nothing wrong with the procedure adopted by the learned magistrate; because the appellants were called upon to plead to the charge laid before them and without any ambiguity, pleaded guilty. Later the Magistrate asked them if they admitted facts of the case, then they all admitted and said that the facts were correct.

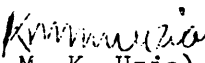
The only problem which I discovered in the course of reading the proceedings, was the procedure of admitting Exhibits in court, all Exhibits were admitted after the appellants were convicted on their plea of guilty. The written statements of the accused person were also admitted after conviction.

The issue in this appeal is whether the Procedural irregularity was such that it prejudiced the appellants and therefore occasioned failure of Justice.

This court finds that the irregularity did not Prejudice the appellants and therefore occasioned failure of Justice. The appellants pleaded guilty and admitted facts which mentioned the name of the Exhibit 'Jora' although the Exhibit itself was produced after conviction. In my view the magistrate correctly convicted the accused person after they had admitted the facts of the case. On the question of sentence, I find nothing from the circumstances of the case to justify me to reduce the sentence. I am satisfied that the punishment of 5 years imprisonment was well meted out.

In the upshot, the appeal is dismissed in its entirety.

Right of Appeal is explained.


(L. M. K. Uzia)

JUDGE